

REMARKS

The above-identified patent application has been reviewed in light of the Examiner's Action dated August 21, 2008. In light of the arguments presented below, the Applicants respectfully submit that the claims are in condition for allowance.

Claims 1-7, 9, 10, 12, 19-21, 23, 25-30, 33-35, 37, 38, 40 and 41 have been rejected as being obvious in light of Paradigm Industries, Inc. stand photographs (the "Paradigm Stand") in view of Peddinghaus and Kiser. Claims 8, 24, 36 and 39 have been rejected as being obvious in view of a combination of a Paradigm and Tischendorf. Claims 13, 15, 17 and 18 have been rejected as being obvious in view of a combination of Paradigm, Tischendorf, Kiser and Peddinghaus. Claims 1-7, 9, 10, 12, 19-21, 23, 25-30, 33-35, 37, 38, 40 and 41 have been rejected as being obvious in light of Moose Aluminum Lift Stand (the "Moose Stand") in view of Peddinghaus and Kiser. Claims 8, 24, 36 and 39 have been rejected as being obvious in view of a combination of the Moose Stand and Tischendorf. Claims 13, 15, 17 and 18 have been rejected as being obvious in view of a combination of the Moose Stand, Tischendorf, Kiser and Peddinghaus.

**Claim Rejection - 35 USC §103 - The Paradigm Stand, Kiser and Peddinghaus**

Claims 1-7, 9, 10, 12, 19-21, 23, 25-30, 33-35, 37, 38, 40 and 41 have been rejected as being obvious in light of a combination of the Paradigm Stand, Kiser and Peddinghaus.

Applicants ask that this rejection be withdrawn since the Paradigm Stand is not prior art. More specifically, the Paradigm Stand was designed by the above-identified inventor, thus disqualifying it as prior art under 35 U.S.C. §102(a). Furthermore, the Paradigm Stand is not prior

art under 35 U.S.C. §102(b) since the instant application was filed less than a year from the first sale of the Paradigm Stand. Since the Paradigm Stand does not qualify as prior art, Applicant requests that this rejection be withdrawn. In order to support the assertion of inventorship, Applicant has enclosed a Declaration Under 37 C.F.R. §1.132.

In order to support a *prima facie* case of obviousness, the references combined by the Examiner must disclose each and every one of the claimed elements. Since the Paradigm Stand cannot be used as prior art in this instance, the combination of Kiser and Pettinghaus must disclose all of the claimed elements. The Examiner has cited the Paradigm Stand as disclosing the majority of the claimed elements, thus, it is believed that this rejection must fail. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

**Claim Rejection - 35 USC §103 - The Paradigm Stand, Kiser and Peddinghaus**

Claims 8, 24, 36 and 39 have been rejected as being obvious in view of a combination of the Paradigm Stand and Tischendorf. As stated above, the Paradigm Stand is not prior art that can be combined with Tischendorf. Thus it is respectfully requested that the rejection of these claims be withdrawn as well.

**Claim Rejection - 35 USC §103 - The Paradigm Stand, Kiser, Peddinghaus and Tischendorf**

Claims 13, 15, 17 and 18 have been rejected as being obvious in view of a combination of the Paradigm Stand, Kiser, Tischendorf and Pettinghaus. As stated above, the Paradigm Stand is

not prior art that may be combined with the remaining references cited by the Examiner. Thus withdrawal of the rejection is respectfully requested.

**Claim Rejection - 35 USC §103 - The Moose Stand, Kiser and Peddinghaus**

Claims 1-7, 9, 10, 12, 19-21, 23, 25-30, 33-35, 37, 38, 40 and 41 have been rejected as being obvious in light of a combination of the Moose Stand, Kiser and Peddinghaus.

Applicants ask that this rejection be withdrawn since the Moose Stand is not prior art. More specifically, as indicated on the Information Disclosure Statement submitted on June 26, 2006, the Moose Stand has a publication date of May 16, 2002. Subsequent to the receipt of the instant Office Action, further analysis of the Moose Stand was conducted. More specifically, the “Way Back Machine” of an Internet Archive (<http://www.archive.org/index.php>) was used to reassess the first publication date of the Moose Stand. The website associated with the Moose Stand listed in the above-identified IDS, <http://www.motorcycle-superstore.com/product.asp?Dept=39&ID=2512>, first appeared on the World Wide Web on January 23, 2002 according to the Internet Archive. The filing date of the instant application is January 11, 2002, thereby disqualifying the Moose Stand as prior art under 35 U.S.C. §102(a) or §102(b).

In order to support a *prima facie* case of obviousness, the references combined must disclose each and every one of the claimed elements. Since the Moose Stand cannot be used as prior art in this instance, the combination of Kiser and Pettinghaus must disclose all of the claimed elements. The Examiner has cited the Moose Stand as disclosing the majority of the claimed

elements, thus, it is believed that this rejection must fail. Accordingly, Applicants respectfully request that the rejection be withdrawn.

**Claim Rejection - 35 USC §103 - The Moose Stand and Tischendorf**

Claims 8, 24, 36 and 39 have been rejected as being obvious in view of a combination of the Moose Stand and Tischendorf. Again, as stated above, the Moose Stand is not prior art that can be combined with Tischendorf. Thus it is respectfully requested that the rejection of these claims be withdrawn as well.

**Claim Rejection - 35 USC §103 - The Moose Stand, Kiser, Peddinghaus and Tischendorf**

Claims 13, 15, 17 and 18 have been rejected as being obvious in view of a combination of the Moose Stand, Kiser, Tischendorf and Pettinghaus. As stated above, the Moose Stand is not prior art that may be combined with the remaining references cited by the Examiner. Thus withdrawal of the rejection is respectfully requested.

**Conclusion**

Based on at least the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. Applicant also traverses the remainder of the Examiner's assertions as to what is taught or disclosed by the cited prior art. More specifically, the arguments submitted herein are believed to sufficiently address the Examiner's

*Application No. 10/044,098*

rejections. Any Examiner's assertion not specifically addressed is not admitted as true. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: /C.W.Mueller/  
Craig W. Mueller  
Registration No. 52,055  
1560 Broadway, Suite 1200  
Denver, Colorado 80202-5141  
(303) 863-9700

Date: November 20, 2008